

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

JOSHUA CAGE

PLAINTIFF

V.

CIVIL ACTION NO. 5:24-cv-20-KS-BWR

**CHRISTOPHER BALLARD
and THE UNITED STATES
POSTAL SERVICE**

DEFENDANTS

ORDER

This is a negligence action filed under the Federal Tort Claims Act (“FTCA”). Plaintiff named the United States Postal Service (“USPS”) and Christopher Ballard, a federal employee, as defendants in his original complaint. On June 24, 2024, defendants filed their motion to dismiss [7] arguing a lack of subject matter and personal jurisdiction. As to subject matter jurisdiction, defendants argue that the USPS and Ballard are immune and the appropriate party to sue in this case is the United States. As to personal jurisdiction, defendants argue plaintiff did not properly serve Ballard or USPS under the Federal Rules of Civil Procedure 4(i)(1)-(2) and 4(m). On the same day that the motion to dismiss was filed, plaintiff filed his motion for leave to file amended complaint [9] under Federal Rule of Civil Procedure 15 and Local Uniform Civil Rule 15. Plaintiff seeks to amend the original complaint by naming only “The United States of America” as a defendant to comply with the FTCA and attached a proposed amended complaint to the motion.

Federal Rule of Civil Procedure 15(a)(2) provides, “[A] party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Local Uniform Civil Rule 15 provides,

If leave of court is required under FED. R. CIV. P. 15, a proposed amended pleading must be an exhibit to a motion for leave to file the pleading, and, if the motion is granted, the movant must file the amended pleading as a separately docketed item within seven (7) days from entry of the order granting the motion.

Attached to plaintiff's motion for leave to file an amended complaint is a proposed amended complaint that names only "The United States of America" as a defendant. In defendants' response to plaintiff's motion, defendants state they "do not oppose such an amendment. As neither Defendants nor the United States have been properly served, however, Defendants would request that, should amendment be allowed, the Court: (a) require Cage to perfect service on the United States within a certain number of days; and (b) allow the United States to have 21 days after service to file a responsive pleading." Because plaintiff attached a proposed amended complaint, defendants did not oppose plaintiff filing an amended complaint, and the Court finds that justice so requires, the Court grants plaintiff leave to file an amended complaint. Plaintiff must perfect service on the United States and file proof of service within 30 days from the date of this order, and the United States will have 21 days after service to file a responsive pleading. Because the amended complaint will only name the United States as a defendant, the United States Postal Service and Ballard will no longer be parties to this suit. Therefore, the Court denies defendants' motion to dismiss [7] as moot.

SO ORDERED AND ADJUDGED this 25th day of July 2024.

/s/ Keith Starrett _____
KEITH STARRETT
UNITED STATES DISTRICT JUDGE